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6 **IN THE SUPREME COURT**

7 **STATE OF ARIZONA**

8 In the matter of:

Supreme Court No. R-19-0040

9 **PETITION TO AMEND RULE 56,**
10 **ARIZONA RULES OF SUPREME**
11 **COURT**

COMMENT OF THE PIMA
COUNTY BAR ASSOCIATION ON
THE PETITION TO AMEND
RULE 56, ARIZONA RULES OF
SUPREME COURT

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13 Pursuant to Rule 28, Ariz. R. Sup. Ct., the Pima County Bar Association
14 respectfully submits the following comment regarding Petition R-19-0040, filed by the
15 State Bar of Arizona. The State Bar contends that, in its current form, Rule 56, Ariz. R.
16 Sup. Ct. ("Rule 56") is both inconsistent and inefficient. The Pima County Bar Association
17 agrees, and we support the State Bar's Petition.

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1 **DISCUSSION**

2 Rule 56 allows bar counsel, in certain cases, to enter into diversion agreements with
3 responding attorneys to bypass the formal disciplinary process. Rather than sanction the
4 respondent, diversion is remedial in nature and may consist of anything from substance
5 abuse counseling and psychological treatment to supplemental legal education, one-on-
6 one mentoring, and practice monitoring services. Ariz. R. Sup. Ct. 56(b)(3). This is
7 beneficial for everyone involved—the State Bar, the responding attorney, and our
8 profession as a whole. First, it relieves the State Bar of the administrative burden of
9 conducting investigations and hearings—almost certainly a non-trivial cost. Second,
10 diversion holds respondents accountable without tarring them with a formal sanction. In a
11 profession as ours whose members suffer so acutely from overwork and substance abuse,
12 it is difficult to overstate the importance of a disciplinary process that privileges
13 rehabilitation above punishment. As Mark Harrison aptly wrote in his Comment, diversion
14 reflects precisely this ethos and encourages us as a profession “to focus more on
15 prophylactic, remedial solutions rather than on sanctions.” And yet, more can be done.

16 As it is currently written, Rule 56 only allows bar counsel to offer diversion before
17 a case is referred for investigation. After that, diversion requires an order from the
18 Attorney Discipline Probable Cause Committee. This requirement not only forces the
19 State Bar to bear more administrative costs, but also it interposes a substantial barrier to
20 those respondents most in need of help—for example, an attorney struggling with
21 addiction whose life could be turned around by drug counseling or a recent law graduate
22 in need of a monitoring service to help her manage a new solo practice. By amending the


1 Rule as the State Bar suggests, more lawyers would have diversion available to them and,
2 by extension, the profession as a whole would stand to benefit.

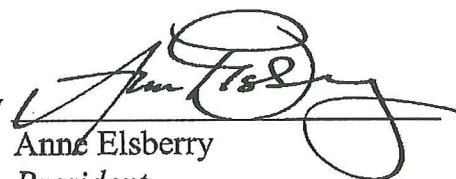
3 **CONCLUSION**

4 *Aequum et bonum, est lex legum.* Just as equity was fashioned to blunt the sharp
5 edge of the common law, so too was Rule 56 contemplated as a flexible alternative to the
6 strictures of formal discipline. Diversion should be available at the discretion of bar
7 counsel without regard to where the case falls in the administrative pipeline—in short, it
8 should be available more often and in more cases. To this end, the Pima County Bar
9 Association strongly supports the State Bar's Petition.

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11 RESPECTFULLY SUBMITTED October 10, 2019

12 **PIMA COUNTY BAR ASSOCIATION**

13
14 By 
15 James W. Rappaport
Rules Committee Chair

16
17 By 
18 Anne Elsberry
President